

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SOUTH AUSTIN PHARMACY, LLC  
*Plaintiff,*

v.

PHARMACISTS MUTUAL  
INSURANCE COMPANY  
*Defendant.*

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Civil Action No. 1:15-cv-00271

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**DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO  
REPORT AND RECOMMENDATIONS OF THE  
UNITED STATES MAGISTRATE JUDGE**

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To the Honorable United States District Judge:

DEFENDANT PHARMACISTS MUTUAL INSURANCE COMPANY  
("Defendant") FILES THIS Response to Plaintiff's Objections to Report and  
Recommendations of the United States Magistrate Judge [#28] pursuant to Federal  
Rule of Civil Procedure 72(b) and in support thereof respectfully shows to the Court as  
follows:

1. The Report and Recommendation of the United States Magistrate Judge ("Report and Recommendation") correctly determined that the District Court should deny both the Motion for Leave to File First Amended Complaint [#9] and the Motion to Remand [#10]. *See* Report and Recommendation, III.
2. The only specific written objection filed by Plaintiff states that the Report and Recommendation failed to make any specific recommendations as to Plaintiff's request that the Court direct the 53<sup>rd</sup> Judicial District Court of Travis County, Texas to sever the state law claims against Mr. Grant W. Guthrie into a separate action. *See* [#29]

Plaintiff's Objections to Report and Recommendation of the United States Magistrate Judge, II. and IV. ("Plaintiff's Motion"). The objection and request are without merit.

3. Plaintiff urges this Court to direct the state court to sever nonexistent claims against Mr. Guthrie from an action in which he is not a party. Plaintiff only named Defendant Pharmacists Mutual Insurance Company in its Original Petition filed on February 20, 2015. As explained in the Objections to Report and Recommendations of the United States Magistrate Judge [#28], Plaintiff sought to amend its state court pleadings to join Mr. Guthrie only after Defendant filed its Notice of Removal [#1] on April 9, 2015. Defendant's removal notice effectuated the removal from state court and prevented the state court from proceeding further unless and until the case is remanded. *See* 28 U.S.C. § 1446(d); *Linton v. Johnson*, 2011 WL 65867, at \*2 (W.D. Tex. 2011). Therefore, Defendant was the only state court defendant upon removal and there are no state court claims pending in state court to sever against Mr. Guthrie.

4. The Report and Recommendation suggested that Plaintiff can pursue claims against Mr. Guthrie in a separate state court proceeding. *See* [#28] Report and Recommendation, II.B.IV.

WHEREFORE, PREMISES CONSIDERED, Defendant Pharmacists Mutual Insurance Company respectfully requests that the Court deny the relief requested within Plaintiff's Motion, adopt the Report and Recommendation of the United States Magistrate Judge in its entirety, enter a ruling denying the Motion for Leave to File First Amended Complaint, the Motion to Remand, and the Motion to Sever and further grant Defendant any all further relief, whether at law or in equity, to which it may be justly entitled.

Respectfully submitted,

BROWN SIMS



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**COUNSEL FOR PHARMACISTS  
MUTUAL INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of June, 2015 a true and correct copy of the foregoing document has been served on counsel of record in accordance with the Federal Rules of Civil Procedure.

**Via Facsimile: 713-583-8715**

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